



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,884	01/17/2006	Ronny Tourlaimain	WSP235US	1557
49003	7590	11/23/2009		
MICHAEL L. DUNN SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221			EXAMINER PUROL, SARAH L	
			ART UNIT	PAPER NUMBER
			3637	
			MAIL DATE	DELIVERY MODE
			11/23/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/528,884	TOURLAMAIN, RONNY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sarah Puroil	3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

As stated in the previous office action in claims 15 and 16 and claims 21 and 22 ,it is noted that the bags recited are not positively claimed. The flexible material webs of claim 21 and 22 are not positively claimed. Regarding clams 25 and 26, the bags are not positively recited. Nevertheless, the examiner has provided herewith several references teaching foldable or collapsible fabric racks for applicant's consideration.

It should be understood that should the fabric or "bags", as applicant prefers to call the material elements be positively claimed, a 103 rejection may be employed with one or more of these references.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14 -27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsiung 5560502 (filed Dec. 2, 1994).

Hsiung teaches a folding rack 100 having a base part (113,112) and side frame parts (111,110), the side parts are articulately connected at a lower end to the base part via elements 13, and are pivotal at least about 90 deg. or more in relation to the base part

from a position perpendicular to the base part (as shown in Figure 1), to a position substantially parallel to the base part (as shown in Figure 12).

A cross strut (uppermost rods 112 in figure 11 ) being articulated to an upper end region of each of the side frame parts (again by elements 13), said struts being pivotal toward one another parallel to the base part (also seen in figure 11), and free ends thereof (not labeled but seen bending inwardly toward the frame center in figure 11 ) being connectable to one another in a substantially rigid manner so that the upper end regions of the side frame parts are held by the cross struts, at a minimum spacing defined by the cross struts, wherein in a mutually connected condition the free ends of the cross struts engage in one another in a connection region and are held together in substantially rigid manner by a pipe clamp (shown as element A shown in figures 1 and 10)reaching over the connection region,and in that in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another.

There is nothing to preclude these racks from being stacked one on top of the other.

Applicant has agreed that the bags per se have not been claimed. Applicant argues that Hsiung is a closet rack. This is true; however, this does not mean that the claims of the instant invention cannot be considered obvious in view of the teachings of Hsiung. Hsiung reads on the claims. Applicant also states that the base is not sturdy. Applicant is arguing the device of Hsuing against the present invention. The claims are at issue

and whether or not the Hsuing reference teaches the limitations present in the claims. Applicant has failed to convincingly argue how the claims in the present application are not met by the Hsuing patent.

In response to applicant's argument that Hsiung is a closet rack, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that the present device is a bag holder, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol whose telephone number is 571-272-6834. The examiner can normally be reached on Monday -Thursday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Allen Shriver, can be reached on 571-272-6698. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sarah Purol/

Primary Examiner

AU 3637